



DEPARTMENT OF THE ARMY

PANAMA CITY FIELD OFFICE, JACKSONVILLE DISTRICT CORPS OF ENGINEERS
1002 WEST 23RD STREET, SUITE 350
PANAMA CITY, FLORIDA 32405-3648

Regulatory Division
Special Project/Enforcement Branch
Enforcement Section

Permit Number: 200206806 (RVH)

Date of Notice: **SEP 14 2004**

PUBLIC NOTICE

1. TO WHOM IT MAY CONCERN: I, Colonel Robert M. Carpenter, District Engineer, Jacksonville District, propose to issue an Order assessing a Class I Administrative Penalty against Mr. Thomas Frey, for a violation of a permit granted under the Clean Water Act.

2. PERMIT INVOLVED AND ALLEGED VIOLATION: Department of the Army (DA) permit number 200206806 was issued to Mr. Frey on May 8, 2003. The permit authorized the construction of a pier and bulkhead in or adjacent to Grand Lagoon. The project site is within Bay Point Subdivision located in Bonefish Pointe, off of and near the eastern end and south of Wahoo Road in Section 10, Township 4 South, Range 15 West, Bay County, Florida.

The permit was violated as follows:

Mr. Frey constructed the bulkhead waterward of the area authorized by the permit, which resulted in an additional impact to 1095 square feet of wetlands.

3. AUTHORITY FOR PROCEEDING: This administrative penalty proceeding is initiated under the authority of 33 U.S.C. §1319(g) and 33 CFR Part 326.6. The procedure for assessing civil penalties in cases such as this is set out in the statute and the regulation. Following the discovery and investigation of a violation of a permit, notice is given to the responsible party, the appropriate State agency, and the public. The responsible party, the State, or any member of the public may file comments within 30 days. If requested by the responsible party, a hearing will be held before a Presiding Officer who will submit a report and recommend a decision to me. I will issue a Final Order on the case to the responsible party. Public participation in the hearing is permitted if a hearing is held.

4. **PENALTY PROPOSED:** The amount of the penalty proposed in this case is \$5,500. However, this proposal is subject to revision in the interests of justice after all evidence and comments have been received and reviewed. The amount of the penalty that I am authorized to assess as a Class I penalty is \$11,000 per violation and not more than \$27,500 total. In a case involving multiple violators, each violator is subject to a separate, not joint, penalty.

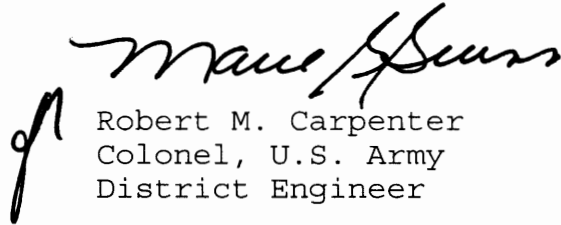
5. **REQUEST FOR HEARING:** The responsible party has 30 days following receipt of this formal notice of Proposed Penalty to request a hearing. Written request, by the responsible party, for a hearing should be directed to me within this designated comment period and must state the specific reasons for requesting a public hearing. The request should specify, in summary form, the factual and legal issues in dispute and the specific grounds for defense. The responsible party has a right to present evidence at the hearing; however, he may not challenge the permit condition(s) or limitation(s), which is the subject matter of this order.

6. **COMMENTS/ADMINISTRATIVE RECORD:** During the 30-day comment period, any person may submit written comments on the Proposed Penalty Order. These comments should be sent to me within this designated comment period. Any submitted comments will be included in the administrative record relating to the Proposed Order. All information submitted by the responsible party and persons commenting on the Proposed Order will be placed in the administrative record, which will be available for inspection during regular business hours at the Regulatory Division Office, Jacksonville District, U.S. Army Corps of Engineers. (The administrative record is subject to provisions of law restricting the disclosure of confidential information.)

7. **PUBLIC HEARING:** The responsible party and all persons who file comments will be given notice of any hearing held on this case. The responsible party and all commenters will have a reasonable opportunity to be heard and to present evidence at such hearing, if a hearing is held.

8. **FINAL DECISION:** If the responsible party does not request a hearing, I may issue the Final Order on this violation on or after 30 calendar days following receipt of this formal notice by the responsible party.

9. POST DECISION HEARING/APPEAL: Any Final Order issued under these procedures shall become effective 30 calendar days following its issuance unless (1) a petition to set aside the Order and to hold a hearing is filed by any person who commented on the Proposed Order and the petition is granted, or (2) an appeal to the United States District Court is taken under 33 U.S.C. §1319(g)(8).


Robert M. Carpenter
Colonel, U.S. Army
District Engineer